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OBLON, SPIVAK, MCCLELLAND MAIER & NEUSTADT, P.C. 1940 DUKE STREET ALEXANDRIA, VA 22314				
EXAMINER				
WRIGHT, PATRICIA KATHRYN				
ART UNIT		PAPER NUMBER		
1797				
NOTIFICATION DATE		DELIVERY MODE		
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Notice of the Office communication was sent electronically on above-indicated "Notification Date" to the following e-mail address(es):

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Office Action Summary

Application No.

10/590,075

Applicant(s)

LE COMTE, ROGER

Examiner

P. Kathryn Wright

Art Unit

1797

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 24 September 2008.
2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 18-34 is/are pending in the application.
4a) Of the above claim(s) _____ is/are withdrawn from consideration.
5) ☐ Claim(s) _____ is/are allowed.
6) ☒ Claim(s) 18-34 is/are rejected.
7) ☐ Claim(s) _____ is/are objected to.
8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO/CDC)
Paper No(s)/Mail Date _____
4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date _____
5) ☐ Notice of Informal Patent Application
6) ☐ Other: _____

DETAILED ACTION

Status of the Claims

1. This action is in response to papers filed September 24, 2008 in which claims 18-22, 24-26, 29-31 and 33 were amended. The amendments have been thoroughly reviewed and entered. Any objection/rejection not repeated herein has been withdrawn by the Office.

Claims 18-34 are under prosecution.

Claim Rejections - 35 USC § 112

2. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

3. Claims 33-34 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 33 recites "wherein the first transporting means, the second transporting means, and the agitating means are a single component." This is confusing and indefinite since claim 18, from which claim 33 directly depends, positively recites three separate and distinct elements (i.e., a first transporting means, a second transporting means and an agitating means). How are these different elements a single component? Furthermore, Figure 10 does not show three separate elements as one device, rather a single element 30 that performs the functions of the first transporting means, a second transporting means, and an agitating means.

Claim Rejections - 35 USC § 102

4. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

5. Claims 18-19, 24-25, 27-28 and 33-34 are rejected under 35 U.S.C. 102(b) as being anticipated by Comte et al., (US Patent Pub. No. 2002/0021983), hereinafter "Comte".

Comte teaches a device for supplying whole blood analyzers with tubes of blood. The analyzer of Comte comprises an agitator (mobile head 100 and head 142) located upstream, and external to, of at least one analyzer (a plurality of hematological instruments, see paragraph [0103]), first transporting means (part of conveyor 10 from load station 14 to mixing position 30) for transporting the tubes of blood one after the other to the agitator 100, second transporting means (part of conveyor 10 from mixing position 30 to unloading station 16) for transporting the tubes of blood mixed by the agitator, one after another to a sampling point 34 of the analyzer. The first and second transporting means are one and the same conveyor 10.

Comte teaches manipulating means 32 for separately picking up the tubes of blood which have not yet been mixed, located in front of the agitator, and placing them in the agitator to agitate them using the agitator, and for separately removing the tubes of blood from the agitator and placing them in the second transporting means for the

mixed tubes to the sampling point of the analyzer. By using loading means 82, the device of Comte can be used without agitator (see fig. 1 and paragraph [0098]-[0100]).

As to claim 24, the agitator 100 comprises a manipulating arm 95 provided with grippers 32 for taking hold of the tubes on the first transporting means and agitating the tubes by rotating the gripper about the longitudinal axis of the manipulating arm.

Regarding claim 25, the agitator 142 comprises a cylinder or wheel to rotate or tilt with indentations 144 for holding the tube.

As to claim 27, the first and second transporting means take the form of a conveyor belt.

With respect to claim 28, each tube fits inside a support member 12 located on the transporting means.

Claim Rejections - 35 USC § 103

6. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.
7. Claims 20-23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comte (US Patent Pub. No. 2002/0021983) in view Takahashi et al., (US Patent no. 6,290,907).

The teachings of Comte have been summarized previously, supra. Comte does not teach the first and second transporting means including different conveyors or a means for reading the identifying means of the tubes.

Takahashi teaches a modular analyzer system comprising a plurality of different conveyors (1a-i) and a bar code reader 15 for reading the identifying means (barcodes)

of the tubes, thus enabling each tube to be directed towards an analyzer depending on the type of analysis specified by the identifying means.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to have included in Comte the multiple conveyors of Takahashi so that the analyzer system can be detached and rearranged into different configurations so as to fit within a laboratory workspace.

8. Claims 26 and 29-31 are rejected under 35 U.S.C. 103(a) as being unpatentable over Comte (US Patent Pub. No. 2002/0021983) in view Kleinsasser (US Patent Pub. No. 2001/0002985).

As discussed above, Comte apparatus includes a manipulating arm 95 for introducing the tubes, one by one, into the agitator 100. The manipulating arm 95 comprises grippers 32 for gripping the tubes. Comte does not teach the agitation means comprising a plurality of wheels aligned along the same rotational axis inside a housing; the wheels being provided with indentations for accommodating tubes that are to be agitated.

Kleinsasser does teach the agitation means comprising a plurality of wheels 3 aligned along a same rotational axis (i.e., horizontal axis) inside a housing; the wheels 3 are provided with indentations 29 for accommodating tubes that are to be agitated.

Accordingly, it would have been obvious to one of ordinary skill in the art to provide Comte with an agitator having a housing with a plurality of wheels, as taught by

Kleinsasser, so as to maximize the number of samples that can be mixed at once, thereby increasing analyzer throughput.

9. Claim 32 is rejected under 35 U.S.C. 103(a) as being unpatentable over Comte (US Patent Pub. No. 2002/0021983) in view Kleinsasser (US Patent Pub. No. 2001/0002985), applied to claim 29 above, in further view of in view Schmidt et al., (US Patent Pub. No. 2001/0048894), hereinafter "Schmidt".

The combined teachings of Comte and Kleinsasser have been summarized previously above. Comte does teach a manipulating arm for gripping the tube supports. However, neither Comte or Kleinsasser teach the arm having a electromagnetic module for adhering the tube support to the end of the manipulating arm.

Schmidt does teach a manipulating arm 500 for gripping the tube supports having a electromagnetic module (magnets 528) in the gripping means, which assists in the gripping function of the jaws 504, 506, thereby helping adhere the tube support to the end of the manipulating arm, see fig. 2a.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to include the Schmidt electromagnetic modules in the gripping means of Comte and Kleinsasser, since Schmidt teaches that it is important that the vial be gripped with sufficient force to ensure that it will not drop during transport and delicately enough such that damage to the vial does not occur. Moreover, it is important that in the event of power failure, the gripper does not suddenly open and allow the vial to drop, see for example paragraph [0006] of Schmidt.

10. Claims 33 and 34, as best understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Comte (US Patent Pub. No. 2002/0021983) in view Guhl (US Patent No. 5,544,683).

As discussed above, Comte teaches a device for supplying whole blood analyzers with tubes of blood. The analyzer of Comte comprises an agitator (mobile head 100 and head 142), first transporting means (part of conveyor 10 from load station 14 to mixing position 30) for transporting the tubes of blood one after the other to the agitator 100, and second transporting means (part of conveyor 10 from mixing position 30 to unloading station 16) for transporting the tubes of blood mixed by the agitator, one after another to a sampling point 34 of the analyzer. The first and second transporting means are one and the same conveyor 10. Comte does not teach a single component performing all of the functions of the first transporting means, second transporting means, and agitating means.

Guhl does teach a single component (robot arm 14) which transports sample tubes, one after the other, to the an attached agitator 15 and then transports the mixed sample tubes, one after another, to a sampling point 12 of the analyzer (reads on scale 17), see col. 5, line 20 et seq.

Accordingly, it would have been obvious to one of ordinary skill in the art at the time of the claimed invention to provide in Comte a single component that performs the functions of the agitator and first and second transporting means, like that taught by Guhl, so as to reduce the analyzer footprint and provide more laboratory space.

Further, it has been held that the use of one piece construction from a plurality of structures is a matter of obvious engineering choice. See MPEP 2144.04 (V).

Response to Arguments

11. Applicant's arguments filed September 24, 2008 have been fully considered but they are not persuasive.

In response to the rejection of claims 33-34 under 35 U.S.C. 112, second paragraph, Applicant has amended claim 33 to recite that the first transporting means, the second transporting means, and the agitating means are a single component. This is allegedly shown in Figure 10 wherein the first transporting means, the second transporting means and the agitating means are comprised by the manipulating arm 30.

The Examiner respectfully disagrees. Claim 18 positively recites three separate and distinct elements (i.e., a first transporting means, a second transporting means and an agitating means). Figure 10 does not show these three separate elements as one device, rather a single element 30 that performs the functions of the first transporting means, a second transporting means and an agitating means. Thus, the claim remains indefinite.

In response to the previous rejection of claims 18-19, 24-25, 27-28 and 33-34 under 35 U.S.C. 102(b) as being anticipated by Comte (US Patent Pub. No. 2002/0021983), Applicant argues that conventional analyzers have incorporate the agitator into the analyzer itself. That is, the conventional device of Comte allegedly includes an agitator integral with the operation of the analyzer, and so it was not possible to flexibly provide agitators for existing or multiple analyzers, as necessary.

The Examiner respectfully disagrees. First, Comte shows the sample means 34 integrally connected to an analyzer (not shown). The agitator 30 is a completely separate element 30 that is not integrally connected to the sample means 34 nr analyzer (see Figs. 1 and 11). Comte teaches placing the sample means 34 between the agitation means 30 and the unloading station (see paragraph [0053]). In addition, like Applicant's invention, tubes of whole blood are agitated outside the analyzer by an agitator 30. Subsequently, a transporting means 10 transports the tubes of blood which have been mixed by the agitator "one after another" to a sampling point 34 of the analyzer. A manipulating means 32 "separately" picks up the tubes (not the cassette 12) and places them in the agitator 100. Comte even teaches the aim of the device is to be readily integrated into a line of several blood analysis units (i.e., existing or multiple analysis units), see paragraph [0015].

Applicant also argues that Comte differs from the claims as written as Comte transports the cassettes 12, not the tubes "one after another".

The Examiner respectfully disagrees. First, the "open" language of the claim does not preclude the use of a cassette to transport the tubes since a cassette can be used to support a single tube. That is, the cassette 12 of Comte can hold one or more tubes (see Fig. 2A). Thus, the tubes of Comte are transported "one after another".

Applicant has not specifically addressed the previous rejection of claims 20-23 under 35 U.S.C. § 103 as being obvious over Comte in view of U.S. patent 6,290,907 Takahashi, claims 26 and 29-31 under 35 U.S.C. § 103 as being obvious over Comte in view of U.S. patent publication 2001/0002985 (Kleinsasser.), and claim 32 under 35

U.S.C. § 103 as being obvious over Comte in view of Kleinsasser and U.S. patent publication 2001/0048894 (Schmidt). Therefore, these rejections are maintained for the reasons set forth above.

Thus, for the reasons delineated above, all of the claims remain rejected over the cited prior art.

Conclusion

12. No claims are allowed.
13. Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

14. Any inquiry concerning this communication or earlier communications from the examiner should be directed to P. Kathryn Wright whose telephone number is 571-272-

2374. The examiner can normally be reached on Monday thru Thursday, 9 AM to 6 PM, EST.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jill Warden can be reached on 571-272-1267. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

PKW

/Jill Warden/
Supervisory Patent Examiner, Art Unit 1797